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IN THE

# Supreme Court of the United States

October Term, 1977

No. 76-1768

TENNESSEE VALLEY AUTHORITY, *Petitioners*

v.

HIRAM G. HILL, JR., SNOWDEN J. B. PLATER, DONALD S. COSBY, THE AUDUBON COUNCIL OF TENNESSEE, INC., THE ASSOCIATION OF SOUTHEASTERN BIOLOGISTS, *Respondents*

Petition for Certiorari from Decision of United States Court of Appeals for the Sixth Circuit Granting Permanent Injunction Against Petitioner

## MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF AMICUS CURIAE EASTERN BAND OF CHEROKEE INDIANS IN SUPPORT OF RESPONDENTS

Box Office, Robbins
P. O. Box 245
Sylva, North Carolina 28779
*Attorney for Amicus Curiae*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

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No. 76-1701

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TENNESSEE VALLEY AUTHORITY, *Petitioners*

v.

HIRAM G. HILL, JR., ZYGMUNT J. B. PLATER, DONALD S. COHEN, THE AUDUBON COUNCIL OF TENNESSEE, INC., THE ASSOCIATION OF SOUTHEASTERN BIOLOGISTS, *Respondents*

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**Petition for Certiorari from Decision of United States Court of Appeals for the Sixth Circuit Granting Permanent Injunction Against Petitioner**

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## MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE EASTERN BAND OF CHEROKEE INDIANS IN SUPPORT OF RESPONDENTS

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The Eastern Bank of Cherokee Indians respectfully move the Court for leave to file the attached brief of an amicus curiae in this case.

The Eastern Band would show the Court that it has unique historical and cultural interests in the lands sought to be impounded by the Petitioners, and that

Congress is the proper forum for weighing these interests against those of the Petitioners.

This the 25th day of July, 1977.

HOLT, HAIRE & BRIDGES, P.A.

BY:
BEN OSHEL BRIDGERS
*Attorney for Respondents*
P. O. Box 248
Sylva, North Carolina 28779
Telephone: (704) 586-2121

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OCTOBER TERM, 1977

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No. 76-1701

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TENNESSEE VALLEY AUTHORITY, *Petitioners*

v.

HIRAM G. HILL, JR., ZYGMUNT J. B. PLATER, DONALD S. COHEN, THE AUDUBON COUNCIL OF TENNESSEE, INC., THE ASSOCIATION OF SOUTHEASTERN BIOLOGISTS, *Respondents*

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**Petition for Certiorari from Decision of United States Court of Appeals for the Sixth Circuit Granting Permanent Injunction Against Petitioner**

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## BRIEF OF AMICUS CURIAE EASTERN BAND OF CHEROKEE INDIANS IN SUPPORT OF RESPONDENTS

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The Eastern Band of Cherokee Indians is a federally recognized Indian tribe entitled to the benefits and standing afforded other Indian tribes by the United States.[1] The purpose of this *amicus* brief, which is filed by leave of this court, is to point out to the Court that its decision in this case would have an im-

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[1] See, Act of June 4, 1924, 43 Stat. 376; *United States* v. *Wright*, 53 F.2d 300 (4th Cir. 1931), *cert. den.* 285 U.S. 539; *Haile* v. *Saunooke*, 246 F.2d 293 (4th Cir. 1957).

portant effect on historical, archeological and cultural matters of great concern to the people of the Eastern Band of Cherokee Indians.

The Eastern Cherokees believe the Sixth Circuit Court of Appeals was correct and that it is important that this decision be allowed to stand. By denying certiorari in this case, the Court will enforce the Endangered Species Act. The political implications which have been raised by petitioner are matters which should be considered by Congress rather than this Court. The very questions raised by petitioner are being reviewed by Congress through a General Accounting Office review, through pending legislation (H.R. 4557, H.R. 5079, 95th Congress, 1st Session), through hearings by the Senate Subcommittee on the Environment and by the House Subcommittee on Fish and Wildlife. The questions urged by petitioner are political questions which fall short of raising justiciable issues requiring resolution by this Court.

The Eastern Band supports the Respondents in this case because this land which would be impounded by petitioner is of unique and profound significance in the history and culture of the Cherokee people. The area within the Tellico Project includes the site of the sacred Cherokee town of Echota, a legal sanctuary to Indians and whites alike and capitol of the Cherokee Nation as early as the Sixteenth Century. This project also encompasses the site to the Cherokee Town of Tennase, from which the State of Tennessee derived its name, as well as the other Cherokee towns of Citico, Toqua, Tommotley, and Toskeegee, the birthplace of Sequoya, the only individual in the history of the civilized world to devise an alphabet. Also within this area



was Fort Loudon, the first English military trading post west of the Appalachians.[2]

Of all the cultures comprising America, only the Indian is indigenous. Archeological deposits and burial grounds have special relevance to an understanding of Indian cultures. The significance of areas such as this, for the Indian as well as for non-Indians, is in sharpening the awareness and appreciation for the unique values and institutions of the Indian people.

If the petitioner is successful in this case, these lands will be flooded and further research and study, further recourse to this valley will be lost forever to the Cherokee people. If this Court leaves the decision of the Court of Appeals standing as a final ruling, the questions raised by petitioner may be balanced by *Congress* against the values represented by the Respondents together with the unique values to the Cherokee people. In the Congressional forum the Cherokee people can point out that:

> The white man saves the whooping crane, he saves the goose in Hawaii, but he is not saving the way of life of the Indian.[3]

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[2] An extensive account of Cherokee culture in the valley of the Little Tennessee may be found in James Mooney, *Myths of the Cherokee and Sacred Formulas of the Cherokee*, Nineteenth Annual Report of the Bureau of American Ethnology (1900); see also, Henry Timberlake, *Memoirs, 1756-1765*, (Johnson City, Tennessee: Watauga Press, 1927); Alberta and Carson Brewer, *Valley So Wild: A Folk History*, (Knoxville: East Tennessee Historical Society, 1975).

[3] V. Armstrong, I Have Spoken, p. 160 (1971), quoting Arnett and Faas, *In Search of America*, Chicago Sun Times, April 18, 1971, § 2 at 16.

On behalf of the Cherokee people and other Indian people who continue to have sacred land damaged and destroyed, the Eastern Band of Cherokee Indians urges the Court to deny certiorari in this case and leave these political questions to be resolved by Congress.

Respectfully submitted,

BEN OSHEL BRIDGERS
P. O. Box 248
Sylva, North Carolina 28779
*Attorney for Amicus Curiae*